

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 248 of 2004
in
CIVIL APPLICATION No.5260 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMESHCHANDRA MOHANLAL

Versus

CHANDABEN WD/O MOHANLAL

BHOLANATH

Appearance:

1. Appeal from Order No. 248 of 2004
MR MB GANDHI for Appellant No.
..... for Respondent No. 1-5/12,5/7-5/9
MR BR GUPTA for Respondent No. 5/2-5/6

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/09/2004

ORAL JUDGEMENT

The appellant-original plaintiff is before this Court being aggrieved of an order dated 08.04.2003 in Misc. Application (restoration) No.868 of 2000. Though prima facie, the order is in favour of the plaintiff as it grants the relief but then in part. This is a case wherein a stricter view is warranted, more particularly in light of the fact that despite order dated 08.04.2003 whereby the learned Judge of the City Civil Court, Ahmedabad was pleased to sentence opponents no.5/2, Vishnukumar Prabhudas Gupta; 5/3, Rohitkumar Prabhudas Gupta; 5/4, Rajkumar Prabhudas Gupta; 5/5, Dharmendra Prabhudas Gupta; and 5/6, Manoj Prabhudas Gupta with civil imprisonment for three months for their wilful disobedience and breach of injunction order.

2. It is stated at the Bar that against this order opponents had approached this Court by filing Appeal From Order No.162 of 2003 which was dismissed on 10.07.2003. The opponents have undergone the sentence of civil imprisonment, that is the precise reason for which a stricter view is required to be taken in this matter. The learned Judge in his elaborate and well considered judgement has recorded in no uncertain terms that the opponents have taken a very adamant stand. It is recorded in para 9 of the order as under:

"The opponents no.5/1 to 5/3 and 5/5 and 5/6 have filed their affidavit at Exh.72 and in this affidavit they have stated on oath that the entire litigation is lookafter (sic.) and conducted and handled by our brother Rajendra Prabhudas Gupta and they had not taken active part in the construction. . . ."
(emphasis supplied)

2.1 Thus, it is clear from the aforesaid statement that even according to the deponents construction is put up, but then they have not taken active part in the construction and hence they are not responsible for the same. It is their brother, Rajendra Prabhudas Gupta, who was looking after and conducting and handling the entire litigation and therefore, it is he who is responsible for the construction.

2.2 It is further stated in the affidavit (Exhibit 72) that they have made construction in the property with a view that the property may not be trespassed or taken possession of by anti social elements.

Thus, the fact of putting up construction is admitted. At this juncture, to hear Mr.Gupta, the learned advocate appearing for the opponents herein that, 'no construction put up and that this can be ascertained by this Court by comparing the two Panchnamas drawn by the Commissioner appointed by the trial court' is not worth entertaining.

2.3 It is also stated in the affidavit (Exhibit 72) that,

".. .. They sincerely apologise to the Court for having acquiesced in further construction of the building after the Honourable Supreme Court passed the order of stopping construction of the property in question."
(emphasis supplied)

From the aforesaid statement contained in the affidavit (Exhibit 72) no doubt, remains in the mind of this Court that the opponents have acted in an irresponsible manner, high-handedly, showing utter disregard for the law and the Court. They preferred to undergo the civil imprisonment than to remove construction put up by them in breach of order of injunction.

3. Mr.Gupta, the learned advocate appearing for the opponents raised all possible, technical objections to the maintainability of this Appeal From Order besides the challenge to the legality and validity of the order passed by the learned Judge. In view of the fact that the Appeal From Order which was filed by these very opponents is dismissed by this Court on 10.07.2003, what was expected of from a law abiding citizen was to submit to the Court, more so when two courts have concurrently held that violating the order of the Court, construction is put up. They should have asked for time to remove the same. The opponents preferred to undergo the civil imprisonment--- a lighter option in their view.

4. Normally, civil imprisonment is awarded only in such cases where the other alternative like the one which is available in this case, of removing of objectionable construction is not available. In the present case, from the fact of opponents preferring to undergo civil imprisonment than to removing the construction shows the 'mental set up' of the opponents. Then, in such cases in the considered opinion of this Court removal of the objectionable construction is must, to restore the respect to the orders of the Court. Not ordering removal of the objectionable construction will send wrong signals

to the society at large and is likely to add a tendency of disobeying the orders of the Court and to prefer to undergo civil imprisonment for which maximum period is of three months. Putting up a construction in breach of an order of injunction is a continuous wrong and remedy for such wrong is removal of the construction. The defaulter cannot be allowed to enjoy such construction. If this is allowed then it may lead to a very dangerous situation. To avoid that the Court is required to order removal of objectionable construction. This Court, after giving anxious thought to the matter has come to the conclusion that ordering of removal of construction is warranted in the facts and circumstances of the case to restore the respect to the orders of the Court.

6. Therefore, this Appeal From Order is allowed and the prayer in terms of para 4(B) is granted. The trial court shall ensure the compliance of this order and report the same to this Court within eight weeks from the receipt of the writ of this Court.

7. Mr.Gupta, the learned advocate appearing for the opponents submitted that this Court may direct the learned Judge to determine the construction which is alleged to have been put up by committing breach of injunction order. This request cannot be entertained for the simple reason that the opponents themselves have admitted in affidavit at Exhibit 72, referred to in para 9 of the order.

8. In view of the order passed in the Appeal From Order, no orders on the Civil Application. The Civil Application is disposed of accordingly.

(Ravi R. Tripathi, J.)
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